

U.S. Pat. App. Ser. No. 09/749,050
Attorney Docket No. 10191/1642
Appeal Brief



[10191/1642]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Immanuel Krauter et al.

For: METHOD OF DETECTING
MANIPULATION OF A
PROGRAMMABLE MEMORY DEVICE
OF A DIGITAL CONTROLLER

Filed: December 27, 2000

Art Unit: 2134

Serial No.: 09/749,050

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AARON C. DEDRICH

APPEAL BRIEF PURSUANT TO 37 C.F.R. § 41.37

SIR:

In the above-identified patent application ("the present application"), Appellants mailed a Notice Of Appeal on November 21, 2006 (which was filed on November 24, 2006) from the Final Office Action issued by the U.S. Patent and Trademark Office on May 24, 2006, so that the two-month appeal brief due date is January 24, 2007, which has been extended by two months to March 26, 2007 (since March 24, 2007 was a Saturday) by the accompanying Transmittal and Petition to Extend.

In the Final Office Action, claims 1 to 11 were finally rejected. A Response After A Final Office Action was mailed on November 21, 2006, and an Advisory Action was mailed on December 18, 2006. It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

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As to the length of the "concise explanation" of the subject matter defined in each of the claims involved in the appeal (see 41.37), the "concise explanation" language is like the "concise explanation" requirement of former Rule 37 CFR 1.192. Accordingly, the length of the concise explanation provided is therefore acceptable, since it would have been acceptable under 37 CFR 1.192 and since it specifically defines the subject matter of the independent claims involved in the appeal. In the filing of many appeal briefs under the old rule for the present Assignee, the length of the final "concise explanation" has almost always been accepted by the Patent Office.

It is therefore respectfully submitted that this Appeal Brief complies with 37 § C.F.R. 41.37. Although no longer required by the rules, this Brief is submitted in triplicate as a courtesy to the Appeals Board.

It is respectfully submitted that the final rejections of claims 1 to 11 should be reversed for the reasons set forth below.

1. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH (“Robert Bosch”) of Stuttgart in the Federal Republic of Germany. Robert Bosch is the assignee of the entire right, title and interest in the present application.

2. RELATED APPEALS AND INTERFERENCES

There are no interferences or other appeals related to the present application, which “will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal”.

3. STATUS OF CLAIMS

Claims 1 to 11 are listed in the Claims Appendix.

A. Claims 1 to 7 and 9 were rejected under the second paragraph of 35 U.S.C. § 112(a) as indefinite.

B. Claims 1 to 7 and 9 to 11 were rejected as obvious under 35 U.S.C. § 103(a) over Berra, U.S. Patent No. 5,787,367, and Komori, U.S. Patent No. 6,044,014 and Blomquist et al., U.S. Patent No. 5,658,250.

C. Claim 8 was rejected as obvious under 35 U.S.C. § 103(a) over Berra, U.S. Patent No. 5,787,367, and Komori, U.S. Patent No. 6,044,014.

Appellants therefore appeal from the final rejections of pending and considered claims 1 to 11. A copy of all of the pending and considered and appealed claims 1 to 11 is in the attached Claims Appendix.

4. STATUS OF AMENDMENTS

In response to the Final Office Action mailed on May 24, 2006, Appellants filed a Response After A Final Office Action (with no amendments), which was mailed on November 21, 2006.

It is understood for purposes of the appeal that any Amendments to date have already been entered by the Examiner, and that the Response After Final does not require entry since it included no amendments.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The concise explanation of the summary of the claimed subject matter is as follows, as described in the context of the present application.

As to independent claim 1 (and claims 8 and 9), it provides for "detecting a manipulation of a programmable memory device of a digital controller for a motor vehicle". The patent application states that it describes a method of detecting manipulation of a programmable memory device of a digital controller for a motor vehicle, in particular for controlling the internal combustion engine, the transmission or the brakes of the motor vehicle. *Further, as to independent claim 1 (and claims 8 and 9), it provides for storing in the programmable memory device data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle.* In this regard, Figures 1 and 2 show a digital controller 1 having a programmable memory device 2, where data and control programs for operating controller 1 and for controlling/regulating certain functions of the motor vehicle are stored. Controller 1 has a microcomputer 3 to process the control programs in memory device 2 for executing the control/regulatory function allocated to it and for self-control. (See specification, page 6, line 30 to page 7, line 4).

Memory device 2 of controller 1 is programmed/reprogrammed by an external programming unit 5 connected to controller 1 over a serial interface, for example. External programming unit 5 is a state machine, in which sequences of operations for programming/reprogramming controller 1 are encoded in the hardware. In Figure 1, external programming unit 5 is connected to controller 1 by a K line 6 and a diagnostic plug 7. For

programming/reprogramming of controller 1, the new data and/or the new control program is transmitted to programmable memory device 2 over K line 6, microcomputer 3 and data line 4. Programmable memory device 2 is a flash EPROM. A flash EPROM has a separate memory area 8, the one-time-programmable (OTP) region. As specifically disclosed, this separate memory area 8 of programmable memory device 2 has a plurality of flash cells having no line for erasing the memory content of the flash cells. The flash cells of separate memory area 8 only have lines for programming and for reading the content of the flash cells. (See specification, page 7, lines 10 to 21).

As to independent claim 1 (and claims 8 and 9), it provides for storing information regarding a programming/reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of information regarding the programming/reprogramming operation being performed in conjunction with each programming/reprogramming operation of the programmable memory device. The specification specifically discloses that information regarding the programming and reprogramming operation is stored in separate memory area 8 of memory device 2 in conjunction with each programming/reprogramming operation of programmable memory unit 2. Controller 1 therefore has an element 9 to receive from microcomputer 3 over a line 10 information regarding when memory device 2 is erased or programmed, and element 9 stores information regarding the programming/reprogramming operation in separate memory area 8 following each erase operation and each programming operation of programmable memory device 2 over a line 11. As to independent claim 1 (and claims 8 and 9), it also provides for the stored information recording a number of times the programmable memory device has been programmed/reprogrammed. The Specification specifically discloses that Information stored in memory area 8 may include the cumulative number of programming/reprogramming operations of memory device 2. For storing the cumulative number of programming/reprogramming operations, a bit is set in separate memory area 8 for each programming/reprogramming operation executed. (See specification, page 7, line 23 to page 8, line 1).

As to independent claim 1 (and claims 8 and 9), it provides for reading out and comparing a content of the separate memory area with another set of information in order to

detect a manipulation, wherein the separate memory area is incapable of being erased, and in which a remaining memory area of the programmable memory device is capable of being erased. The present application specifically discloses that the information regarding the programming/reprogramming operation stored in memory area 8 is documented. When the motor vehicle is taken to a workshop and warranty claims are made or if memory device 2 of controller 1 is to be reprogrammed, the content of separate memory area 8 can be read out and compared with the documented information in memory area 8. *If the information stored in separate memory area 8 matches the documented information, there has not been any unauthorized manipulation of controller 1. If the information read out of memory area 8 does not match the documented information, then there has been an unauthorized manipulation of controller 1.* In such a case, warranty or liability claims can be refused. Data stored in memory device 2 is protected against unauthorized manipulation of the control program by a seed-and-key method. (See specification, page 8, lines 3 to 14).

Finally, Figure 2 shows an alternative method according to the presently claimed subject matter, in which external programming unit 5 is connected to controller 1 via a serial interface 12 and a data line 13. Programming unit 5 has an element 14 by which information regarding the programming and reprogramming operation with each programming and reprogramming operation of programmable memory device 2 is stored in separate memory area 8. (See specification, page 8, lines 17 to 23).

In summary, the presently claimed subject matter of claim 1 is to a method for detecting a manipulation of a programmable memory device of a digital controller for a motor vehicle, including: storing in the programmable memory device data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle; storing information regarding a programming/reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of information regarding the programming/reprogramming operation being performed in conjunction with each programming/reprogramming operation of the programmable memory device, the stored information recording a number of times the programmable memory device has been

programmed/reprogrammed; and reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation, wherein the separate memory area is incapable of being erased, and wherein a remaining memory area of the programmable memory device is capable of being erased. (See claim 1).

In summary, the presently claimed subject matter of claim 8 is to an external programming unit for at least one of programming and reprogramming a flash memory of a digital controller for a motor vehicle, the flash memory including a programmable memory device, the external programming unit including: an arrangement for storing in the flash memory data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle; an arrangement for storing information regarding a programming/reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of the information regarding the programming/ reprogramming operation occurring in conjunction with each programming/reprogramming operation of the programmable memory device, the stored information recording a number of times the programmable memory device has been programmed/reprogrammed; an arrangement for reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation; and an arrangement for storing in the separate memory area information from an external programming unit for programming/reprogramming the flash memory, wherein a remaining memory area of the programmable memory device is capable of being erased. (See claim 8).

In summary, the presently claimed subject matter of claim 9 is to a digital controller for a motor vehicle, including: a programmable memory device for storing data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle; an arrangement for storing information regarding a programming and reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of the information regarding the programming/reprogramming operation occurring in conjunction with each

programming/ reprogramming operation of the programmable memory device, the stored information recording a number of times the programmable memory device has been programmed/reprogrammed; an arrangement for reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation; and an arrangement for storing in the separate memory area information from an arrangement of the digital controller for storing the information regarding the programming/reprogramming operation, wherein the separate memory area is incapable of being erased, and wherein a remaining memory area of the programmable memory device is capable of being erased. (See claim 9).

In summary, the presently claimed subject matter of dependent claim 5 (which depends from claim 6), provides that the multilayer system is situated on a substrate between a cover layer and a buffer layer. (See claim 5).

Finally, the appealed claims include no step-plus-function claims, so that 41.37(v) is satisfied as to its specific requirements for such claims, since none are present here. The present application does not contain any step-plus-function claims because the method claims in the present application are not “step plus function” claims because they do not recite “a step for”, as required by the Federal Circuit and as stated in Section 2181 of the MPEP.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1 to 7 and 9 are indefinite under the second paragraph of 35 U.S.C. § 112.

B. Whether claims 1 to 7 and 9 to 11 are obvious under 35 U.S.C. § 103(a) over Berra, U.S. Patent No. 5,787,367, and Komori, U.S. Patent No. 6,044,014 and Blomquist et al., U.S. Patent No. 5,658,250.

C. Whether claim 8 is obvious under 35 U.S.C. § 103(a) over Berra, U.S. Patent No. 5,787,367, and Komori, U.S. Patent No. 6,044,014.

7. ARGUMENT

A. The Rejections Under 35 U.S.C. § 112, Second Paragraph, That Claims 1 to 7 and 9 Are Indefinite

Claims 1 to 7 and 9

It is respectfully submitted that each of claims 1 to 7 and 9 fully complies with § 112 as to definiteness, since those having ordinary skill would understand what is claimed when the claim is read in view of the specification. See Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 27 U.S.P.Q.2d 123 (Fed. Cir. 1993).

In particular, the Office is respectfully referred to the present application, which provides disclosure in complete accord with the plain meaning of each of the identified claim provisions cited in the Final Office Action so that each of claim 1 and 9 (and dependent claims 2 to 7) is plainly definite so as to comply with 35 U.S.C. § 112, second paragraph.

As regards the cited claim provisions, the present application specifically discloses, for example, on page 5, third paragraph, that the OTP cells are made up of flash cells -- from which, however, the lead wire for the increased voltage was removed, where the increased voltage is used for erasing (deleting). Therefore, these are not flash cells that are then supposed to be programmable based on their definition. By way of example, if you remove the engine from a car, you simply do not have a car anymore, but just a body shell. If you remove, from flash cells, the lead wire necessary for erasing, you simply do not have a flash cell anymore, but rather a new component that can only be programmed once. Therefore, the Final office Action conclusory assertions have been wholly refuted.

Still further, it is respectfully submitted that the presently pending claims comply with the second paragraph of § 112 since a person having ordinary skill in the art would

understand what is claimed when the claim is read in view of the specification. See Miles Labs., Inc. v. Shandon, Inc., 997 F.2d 870, 27 U.S.P.Q.2d 123 (Fed. Cir. 1993).

In this regard, it is also noted that it is axiomatic that the terms in a claim are to be understood in view of the specification. (See In re Weiss, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must “look to the specification for the meaning ascribed to that term”; Board reversed) (unpublished decision); In re Okuzawa, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976) (“claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification”; Board reversed; emphasis in original) (citing In re Royka, 180 U.S.P.Q. 580, 582-83 (C.C.P.A. 1974) (claims are “not to be read in a vacuum” and “their terms still have to be given the meaning called for by the specification of which they form a part”; Board reversed; emphasis in original); and In re Rohrbacher, 128 U.S.P.Q. 117, 119 (C.C.P.A. 1960) (an “applicant is his own lexicographer and words used in his claims are to be interpreted in the sense in which they are used in the specification”; Board reversed)).

Accordingly, it is respectfully submitted that the meaning of the phrases cited in the Office Action are sufficiently clear to those of skill in the art to “particularly point out and distinctly claim the presently claimed subject matter, so that each of claims 1 and 9 (and dependent claims 2 to 7) complies with 35 U.S.C. § 112, second paragraph.

It is therefore respectfully requested that the indefiniteness rejections be reversed.

**B. The Rejections Under 35 U.S.C. § 103(a)
That Claims 1 to 7 and 9 to 11 Are Obvious
Over Berra, Komori and Blomquist**

Claims 1 to 7 and 9 to 11

As regards the cited claim provisions of claims 1 and 9 (and 8) (namely, that the separate memory area is incapable of being erased, and that the remaining memory area of the programmable memory device is capable of being erased), the present application specifically discloses, for example, on page 5, third paragraph, that the OTP cells are made up of flash cells -- from which, however, the lead wire for the increased voltage was removed, where the increased voltage is used for erasing (deleting). Therefore, these are not flash cells

that are then supposed to be programmable based on their definition. By way of example, if you remove the engine from a car, you simply do not have a car anymore, but just a body shell. If you remove, from flash cells, the lead wire necessary for erasing, you simply do not have a flash cell anymore, but rather a new component that can only be programmed once. Therefore, the Final office Action conclusory assertions have been wholly refuted.

As to the critical Blomquist reference, after being programmed once this boot program is also not programmable. So that's the problem of the flash memory 150 mentioned in the Blomquist reference. In contrast, with the presently claimed subject matter of claims 1 and 9 (and 8), they each require a separate memory area in which information may be stored, so that it may be programmed and read but not erased. The idea is to find out if there was a manipulation and not to prevent a manipulation. So the claimed subject matter has one separate memory area and this area may be read out and may be programmed -- so that there is information which is written into this area -- which area is not erasable.

In the Blomquist reference, there is no such single area, since it only refers to one area, a flash memory 150, which can be electrically erased and rewritten. There is a boot program in this flash memory which is not programmable anymore, and which may only be read out when initializing and starting. In the flash memory of Blomquist, there is no area, as with the presently claimed subject matter, which may be read out and in which information may be written, but which is non-erasable.

As to the claimed subject matter, this is necessary to record a manipulation and to have an evidence, which is not erasable. So with the claimed subject matter, if a cell of the flash memory is erased or rewritten, information may be a single bit that is programmed into the recited memory area whereby this area cannot erase it.

The Blomquist reference does not disclose (and the other references are not asserted to cure and do not cure this lack of disclosure) that in conjunction with each programming/reprogramming operation of the programmable memory device an information with regard to this programming/reprogramming operation is stored in a separate memory area, whereby this memory area is built up so that only reading and storing of information is possible -- but no erasing of information. The references relied upon, including Blomquist, do

not disclose nor suggest a special single memory area with this features, as provided for in the context of each of claims 1 and 9 (and 8), as explained herein.

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine the reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

**C. The Rejection Under 35 U.S.C. § 103(a)
That Claim 8 is Obvious Over Berra and Komori**

Claim 8

As presented, claim 8 essentially requires that the separate memory area is incapable of being erased. The Final Office Action admits that Berra and Komori do not disclose this feature, so that claim 8 is allowable for essentially the same reasons explained above as to claims 1 and 9.

It is therefore respectfully requested that the obviousness rejection of claim 8 be withdrawn.

As further regards all of the obviousness rejections discussed herein, in rejecting a claim under 35 U.S.C. § 103(a), the *Office* bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine,

837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Thus, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim element and it must also suggest combining the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)).

Moreover, the “problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem.” (See Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998)).

It is respectfully submitted that, as discussed above, the references relied on, whether taken alone or combined, do not suggest in any way modifying or combining the references so as to provide the presently claimed subject matter for addressing the problems and/or providing the benefits addressing the problem of “shifting the working point using auxiliary magnetic fields in the layer array that are generated in different ways” using the presently claimed subject matter, as explained herein and in the specification.

More recently, the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not even the case here, there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed”, stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled

artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

(See In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Federal Circuit 2000) (italics added)). Here again, it is believed that there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference relied upon makes plain that it simply does not describe the features discussed above of the claims as now presented.

Thus, the proper evidence of obviousness must show why there is a suggestion as to the reference so as to provide the subject matter of the claimed subject matter and its benefits.

In short, there is no evidence that the reference relied upon, whether taken alone or otherwise, would provide the features of the claims discussed above. It is therefore respectfully submitted that the claims are allowable for these reasons.

As further regards all of the obviousness rejections of the claims, it is respectfully submitted that not even a *prima facie* case has been made in the present case for obviousness, since the Office Actions to date never made any findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the time the claimed subject matter of the present application was made. (See In re Rouffet, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art”)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (See In re Kotzab, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing In re Dembiczak, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning

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the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of the problem to be solved”))). It is respectfully submitted that there has been no such showings by the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellants and this Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (*See In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))). In short, the Examiner bears the initial burden of presenting a proper prima facie unpatentability case — which has not been met in the present case. (*See In re Oetiker*, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

Accordingly, claims 1 to 11 are allowable for the foregoing reasons.

CONCLUSION

In view of the above, it is respectfully requested that the rejections of the finally rejected claims 1 to 11 be reversed since these claims are allowable.

Respectfully submitted,

Dated: 3/26/2007

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CLAIMS APPENDIX

1. (Previously Presented) A method for detecting a manipulation of a programable memory device of a digital controller for a motor vehicle, comprising the steps of

storing in the programmable memory device data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle;

storing information regarding a programing/reprograming operation in a separate memory area of the programmable memory device where only reading and programing are possible, the step of storing information regarding the programming/reprogramming operation being performed in conjunction with each programing/reprograming operation of the programable memory device, the stored information recording a number of times the programmable memory device has been programmed/reprogrammed; and

reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation, wherein the separate memory area is incapable of being erased, and wherein a remaining memory area of the programmable memory device is capable of being erased.

2. (Previously Presented) The method according to claim 1, further comprising the step of:
storing in the separate memory area information regarding a cumulative number of programing/reprograming operations of the programable memory device.

3. (Original) The method according to claim 1, further comprising the step of:
storing in the separate memory area the information regarding the programing/reprograming operation with each erase operation of the programable memory device.

4. (Original) The method according to claim 1, wherein:
the information regarding the programming/reprogramming is stored in the separate memory area by setting bits.

5. (Previously Presented) The method according to claim 1, further comprising the step of:
storing the information regarding the programming/reprogramming in a one-time-programmable region of the programmable memory device, the programmable memory device being arranged as a flash memory.
6. (Previously Presented) The method according to claim 1, further comprising the step of:
storing in the separate memory area information from an external programming unit for programming/reprogramming a flash memory.
7. (Previously Presented) The method according to claim 1, further comprising the step of:
storing in the separate memory area information from an arrangement of the digital controller for storing the information regarding the programming/reprogramming operation.
8. (Previously Presented) An external programming unit for at least one of programming and reprogramming a flash memory of a digital controller for a motor vehicle, the flash memory including a programmable memory device, the external programming unit comprising:
an arrangement for storing in the flash memory data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle;
an arrangement for storing information regarding a programming/reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of the information regarding the programming/reprogramming operation occurring in conjunction with each programming/reprogramming operation of the programmable memory device, the stored information recording a number of times the programmable memory device has been programmed/reprogrammed;
an arrangement for reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation; and
an arrangement for storing in the separate memory area information from an external programming unit for programming/reprogramming the flash memory, wherein a remaining memory area of the programmable memory device is capable of being erased.

9. (Previously Presented) A digital controller for a motor vehicle, comprising:

a programmable memory device for storing data and control programs for an operation of the digital controller and for a control/regulation of functions of the motor vehicle;

an arrangement for storing information regarding a programming/reprogramming operation in a separate memory area of the programmable memory device where only reading and programming are possible, the storing of the information regarding the programming/reprogramming operation occurring in conjunction with each programming/reprogramming operation of the programmable memory device, the stored information recording a number of times the programmable memory device has been programmed/reprogrammed;

an arrangement for reading out and comparing a content of the separate memory area with another set of information in order to detect a manipulation; and

an arrangement for storing in the separate memory area information from an arrangement of the digital controller for storing the information regarding the programming/reprogramming operation, wherein the separate memory area is incapable of being erased, and wherein a remaining memory area of the programmable memory device is capable of being erased.

10. (Previously Presented) The method according to claim 1, wherein the separate memory area lacks hardware for performing an erase operation thereon.

11. (Previously Presented) The digital controller according to claim 9, wherein the separate memory area lacks hardware for performing an erase operation thereon.

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EVIDENCE APPENDIX

Appellants have not submitted any evidence pursuant to 37 CFR Sections 1.130, 1.131 or 1.132, and do not rely upon evidence entered by the Examiner.



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RELATED PROCEEDINGS INDEX

There are no interferences or other appeals related to the present application.

